

## THRESHOLD CONSTITUTIVISM AND SOCIAL KINDS

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IN “Constitutivism without Normative Thresholds,” Kathryn Lindeman raises two objections to what she aptly calls *Threshold Constitutivism*. My aim in this short discussion is to respond to her first objection.<sup>1</sup> Although I will argue that this objection fails, I will also argue that thinking through how to respond to it reminds us of something important—namely, that many of the norm-governed kinds that are directly related to intentional action are social kinds, that is, kinds whose existence conditions we ourselves collectively write.

Constitutivism is an attractive position, on my view, because it aims to show that claims about which actions we ought to perform are true (at least in part) in virtue of the nature of intentional action rather than in virtue of the supposed existence of realist truthmakers that many of us find metaphysically, epistemically, and motivationally puzzling. According to what Lindeman calls naïve constitutivism, the norms that are constitutive of a kind *K* are those norms that an individual must fully satisfy in order to be a *K*. So understood, naïve constitutivism leaves no room for defective kind-members and, thus, no room for it to be true that an individual *K* ought to become better than she is, *qua K*. This means that naïve constitutivism cannot give us a (nonrealist) account of what makes it true that some *K* ought to become better than she is, *qua K*.

As Lindeman explains, many “constitutivists make room for defective kind-members” by rejecting naïve constitutivism and accepting what she calls the *Threshold Commitment*, which says, “For norm-governed kinds, an individual must *at least partially satisfy* the constitutive norms of a kind . . . in order to be a member of that kind.”<sup>2</sup> Lindeman then argues that constitutivists who accept this commitment—that is, Threshold Constitutivists—face an insurmountable problem about what I will call *nonthreshold norm-governed kinds*. This is the objection I aim to answer in this discussion.

- 1 Lindeman’s second objection depends on her view, which I do not share, that “Normative Constitutivism has ambitions to be an explanatory strategy for norms *in general*” (“Constitutivism without Normative Thresholds,” 238, emphasis added).
- 2 Lindeman, “Constitutivism without Normative Thresholds,” 235–36, emphasis added.

First, of course, I need to explain the objection. *K* is a nonthreshold norm-governed kind if and only if:

1. *K* is a norm-governed kind: *K* is a “goodness-fixing kind the [goodness-fixing] norms of which come from its constitutive nature”; but
2. *K* is not a threshold kind: membership in *K* is not a matter of even minimally meeting the norms that are good-making for members of *K*; instead, the conditions for being a *K* are nonnormative.<sup>3</sup>

From here on, I will refer to nonthreshold norm-governed kinds simply as *nonthreshold kinds* since almost all of the kinds I will discuss are norm governed.

It may seem as if the idea of a nonthreshold kind is incoherent and, thus, as if Lindeman’s objection cannot get off the ground. After all, if there are standards about what makes something a good or bad *K* that follow from what it is to be a *K*, how can something count as a *K* if it fails to meet those standards to any degree at all?

Lindeman does not explicitly consider this challenge, but she does argue that “social kinds like Spouse appear to provide ready cases of [norm-governed] kinds that lack normative thresholds.”<sup>4</sup> According to Lindeman, Spouse is a nonthreshold kind because “in contemporary practice, we take legal recognition to be at least partially determinant of *becoming* a spouse, and recognized removal of legal recognition to be a sufficient (and, along with the death of one’s spouse, exhaustive) condition on *ceasing* to be a spouse.”<sup>5</sup> Furthermore, “one does not become a spouse by being a good enough one, and one cannot cease being a spouse *merely in virtue of* being a bad enough one.”<sup>6</sup> In other words, all one has to do to be someone’s spouse is to become and remain legally married to that person, and becoming and remaining legally married to someone has nothing to do with whether one is even a minimally good spouse to that person.

Lindeman’s account of Spouse mistakenly conflates two different kinds: Spouse and Life Partner. Life Partner is, I contend, a threshold kind. To be someone’s life partner is, very roughly, to maintain at least some of the following relationships with her over a long period of time: cohabitation, a very close economic relationship, a very close emotional relationship, a sexual relationship. If you do poorly enough at maintaining these relationships with someone, you fall below the threshold required to count as her life partner.

3 Lindeman, “Constitutivism without Normative Thresholds,” 239.

4 Lindeman, “Constitutivism without Normative Thresholds,” 238–39. I will follow Lindeman and “use the singular, capitalized noun to pick out the kind, and lowercase uses to pick out instances in the singular or plural” (239n26).

5 Lindeman, “Constitutivism without Normative Thresholds,” 239.

6 Lindeman, “Constitutivism without Normative Thresholds,” 239.

Contrast that with Spousehood. To become someone's spouse, you and another person (who you are legally eligible to marry) take whatever steps are required to become legally married. In principle, one or both of you could decide to enter into this marriage without any consideration of whether the other person will be even a minimally good life partner. However, most people decide to marry someone only when they think she will be a good (enough) life partner. What it takes to remain a spouse is simply that you and the person you are married to stay alive and neither of you divorces the other. For simplicity's sake, let us focus on divorce.<sup>7</sup> If you live in a state with no-fault divorce laws, then, in principle, either of you could dissolve your marriage without any consideration of whether the other is a good life partner. However, I take it that at least part of the point of no-fault divorce laws is that they allow a married person to end her marriage if she judges that her spouse is no longer a minimally good life partner without having to prove to the state that her judgment is correct.

In sum, I agree with Lindeman that Spouse is a nonthreshold kind. However, *contra* Lindeman, Spouse is not a norm-governed kind. Spouse *seems* like a norm-governed kind because Life Partner is a norm-governed kind, and we have linked Spousehood closely to Life Partnership, both in terms of our individual decisions about whether to become someone's spouse and in terms of our societal decisions about what laws should govern Spousehood.

It may now seem even more tempting to argue that the idea of a nonthreshold kind is incoherent, but we should resist that temptation. It would be perfectly coherent for there to be a kind *K* such that the goodness-fixing norms for *K*s follow from the nature of *K*-hood, and yet the conditions by which an individual becomes (and remains) a *K* have nothing to do with whether that individual complies with those norms. In principle, we can write the existence conditions for our social kinds—the kinds we collectively create—so that they say whatever we want them to say.

Let us return, then, to Lindeman's claim that nonthreshold kinds pose a fatal problem for Threshold Constitutivists. She argues as follows: Threshold Constitutivists cannot explain the constitutive norms of nonthreshold kinds because their explanation of the norms of a kind *K* depends on the idea that in order for an individual to be a *K*, that individual has to meet those norms, at least minimally, and that is not true for nonthreshold kinds.

My response to Lindeman, very briefly, is this. There are two different questions we need to answer in order to explain the goodness-fixing norms of any

7 I assume it is obvious that a dead person cannot maintain any of the relevant relationships and thus cannot be even a minimally good life partner.

norm-governed kind that is directly related to intentional action. Threshold Constitutivists can answer the first question exactly the same way any constitutivist would, and they can give an entirely satisfactory answer to the second question as well.

The first question we have to answer to explain the norms of a norm-governed kind *K* is what I call the *content question*: What are the goodness-fixing norms of *K*s? In other words, what is the content of those norms? Threshold Constitutivists can answer this question exactly the same way any constitutivist would—namely, by deriving the content of the norms from the nature of the kind. (A good house keeps the weather out. A good doctor helps her patients become and remain healthy. Etc.)

If a kind *K* is directly related to intentional action, then in order to explain the norms of *K*, we also have to answer what I call the *compliance question*: Why should an individual *K* comply with the goodness-fixing norms of *K*-hood? For example, why should a doctor help her patients become and remain healthy? Why should someone building a house build one that keeps the weather out?

Threshold Constitutivists begin their answer to the compliance question this way: if you do not comply with the goodness-fixing norms of *K*, you will not be (or will not be making) a *K* at all. For example, “According to Korsgaard, what should make you interested in building a *good* house is the risk that if you do not do it well enough, you will not end up with a house at all.”<sup>8</sup> (It is crucial to notice that this answer is not complete unless it also addresses the question, Why should one be [or make] a *K*? How best to address this question is not Lindeman’s focus in her paper, and it will not be mine here, but I will return to it briefly below.)

Lindeman then argues, quite rightly, that Threshold Constitutivists cannot say the same thing about why someone should comply with the norms of a nonthreshold kind, since someone can completely fail to comply with those norms and still be (making) a member of that kind.

Here—I submit—is how Threshold Constitutivists should answer the compliance question about nonthreshold kinds, in three steps.

*Step One.* Simplifying greatly, but in a way that will not matter for my argument, we can divide all conceivable norm-governed kinds into two types:

1. *Good kinds*: those where it would be good if at least some individuals complied with the goodness-fixing norms of the kind; and
2. *Bad kinds*: those where it would be bad if anyone complied with the goodness-fixing norms of the kind.

8 Lindeman, “Constitutivism without Normative Thresholds,” 238.

*Step Two.* If there are any nonthreshold kinds that are good kinds, then we ought to change their existence conditions so that they become *threshold* kinds. Once those changes are made, the Threshold Constitutivist will have no trouble answering the compliance question about the kinds in question since they will have become threshold kinds.

Take Doctor, for example. This is a norm-governed kind since someone is a better doctor the more effective she is at helping her patients become and remain healthy. However, suppose Doctor were a nonthreshold kind. That is, suppose that in order to become (and remain) a doctor, a person did not have to be even minimally good at helping her patients become and remain healthy. For example, suppose we made medical licenses available to anyone who wanted one and could pay the fee—the way we make fishing licenses available—and suppose we allowed people to keep their medical licenses no matter how ineffective they were at helping their patients. In that case, if someone were a doctor but did not see any reason to comply with the goodness-fixing norms of Doctorhood, we would not be able to convince her to comply by saying, “If you do not, you will not be a doctor at all.” However, the problem with this awful scenario is not Threshold Constitutivism. The problem is that we should not allow someone to become or remain a doctor if she is not at least a minimally good doctor. In short, Doctor should be a threshold kind.

I hear an objection: someone with a medical license who is wholly ineffective at helping people become and remain healthy is not really a doctor. My reply is that one of the following is true:

1. Such a person *is* a doctor because she is legally permitted to treat patients.
2. You are right about *this* attempted example of a nonthreshold kind. Doctor is (already) a threshold kind because having a license is not sufficient (or perhaps even necessary) for being a doctor. But some other example would work in its place.
3. No other example would work in its place, in which case the idea of a nonthreshold norm-governed kind is incoherent after all, and Lindeman’s objection, which is the focus of my discussion, never gets off the ground.

*Step Three.* If the compliance question were asked about a nonthreshold kind that is a bad kind, Threshold Constitutivists would have no trouble giving the right answer. Imagine a kind we might call Gratuitous Tormentor. The goodness-fixing norm of this kind says, “Cause other people as much pain as you can in such a way that no one is benefited.” Now imagine that Gratuitous Tormentor is a nonthreshold kind. For example, imagine that someone can

become a gratuitous tormentor simply by obtaining a Gratuitous Tormentor license, regardless of whether she is even a minimally “good” gratuitous tormentor—that is, regardless of whether she is even minimally “good” at causing others gratuitous pain. (A Gratuitous Tormentor license would make it legal for the licensee to cause others gratuitous pain.) Finally, imagine that the compliance question were asked about this kind: Why should someone who is a gratuitous tormentor comply with the goodness-fixing norm(s) of this kind? The correct answer to this question is, “She shouldn’t. No one should.” A Threshold Constitutivist can give this answer just as well as anyone else.

I hear another objection. The three-step answer I have just given depends on a distinction between good kinds and bad kinds, but it seems impossible to give a constitutivist account of this distinction. After all, how could the goodness (or badness) of someone’s following the norms of a kind  $K$  be grounded in the goodness-fixing norms of some other kind  $K^*$  (much less in the goodness-fixing norms of  $K$  itself), as it would have to be for the account to be constitutivist?

Giving a constitutivist account of the distinction between good kinds and bad kinds would be challenging. However, if Threshold Constitutivists can answer the compliance question about any threshold kinds, then they can also give an account of the good kind/bad kind distinction. Why? Because the ultimate question they have to address to answer the compliance question is also the ultimate question they have to address to give an account of this distinction. Let me explain.

The compliance question asks, Why should an individual  $K$  comply with the norms of  $K$ -hood? The Threshold Constitutivist answer is “because if she does not, she will not be a  $K$ .” Thus, as I mentioned above, to address the compliance question fully, Threshold Constitutivists have to address the question, Why should an individual  $K$  be (or remain) a  $K$ ? The most straightforward Threshold Constitutivist answer to that is “because, given this individual’s situation, the goodness-fixing norms of Intentional Agenthood require her to be a  $K$ .”<sup>9</sup> And once Threshold Constitutivists give that answer, they need to address what I call the *intentional agent question*, which asks, Why should an individual be (or remain) an intentional agent?<sup>10</sup>

9 This is the *most straightforward* Threshold Constitutivist answer because it does not involve assuming that the goodness-fixing norms of any kinds other than Intentional Agent and  $K$  are normative for the individual in question.

10 I say Threshold Constitutivists need to *address* this question—rather than *answer* it—because Hille Paakkunainen argues that “the nature of agency can in principle ground authoritative reasons for agents to act, even if there isn’t, in addition, a reason to be an

Return now to the good kind/bad kind distinction. Any account of this distinction has to answer the question, For any norm-governed kind  $K$ , would it be good if someone complied with the goodness-fixing norms of  $K$ ? If  $K$  is a social kind, as it has to be in order to be a nonthreshold kind, the question can be put this way: Should the existence condition(s) for  $K$ s be rewritten in such a way that in order for someone to be (or remain) a  $K$ , she must comply with the norms of  $K$ ? The most straightforward Threshold Constitutivist answer to that question will be: “Yes, if in order for us to comply with the norms of Intentional Agenthood, we need to live in a society in which at least some people comply with the norms of  $K$ ; no, if in order for us to comply with the norms of Agenthood, we need to live in a society in which no one complies with the norms of  $K$ .”<sup>11</sup> And once Threshold Constitutivists give this answer, they then need to address the intentional agent question, which asks: Why should an individual agent be (or remain) an intentional agent?

In sum, the objection from Lindeman that I have focused on does not undermine Threshold Constitutivism. However, by thinking through how to respond to that objection, we are reminded of something important: many of the norm-governed kinds that are directly related to intentional action are social kinds—that is, kinds whose existence conditions we ourselves collectively write. Everyone, whether constitutivist or not, needs to think seriously about what those existence conditions should be because what they are is up to us.

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#### REFERENCES

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agent” and I want to remain neutral about whether Paakkunainen is right about this (“Doing Away with the ‘Shmagency Objection’ to Constitutivism,” 433).

- 11 For many—perhaps most—potential kinds, the answer to this question will not be so straightforward. Some kinds will be entirely optional with respect to agenthood; that is to say, whether anyone in our society complies with their goodness-fixing norms will make no difference to our ability to comply with the norms of Intentional Agenthood. The instantiation of other kinds by someone in our society will make it easier or harder for us to comply with the norms of Agenthood, but their instantiation will not be strictly necessary for nor strictly incompatible with our complying with those norms.

Paakkunainen, Hille. "Doing Away with the 'Shmagency Objection' to Constitutivism." *Manuscrito* 41, no. 4 (October–December 2018): 431–80.